

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 DAWNYELL FLYNN,

5 Plaintiff,

6 v.

7 TODD WILLIAMS, et al.,

8 Defendants.
9

Case No. 2:24-cv-00563-APG-BNW

REPORT AND RECOMMENDATION

10 On July 23, 2024, the Court granted Plaintiff's application to proceed *in forma pauperis*
11 and thereafter screened her complaint. ECF Nos. 11 and 12. Although the Court dismissed
12 Plaintiff's claims, it allowed Plaintiff leave to amend and gave her until September 4, 2024 to file
13 an amended complaint. ECF No. 12. Plaintiff failed to comply with the deadline and to date has
14 not filed an amended complaint. As a result, the Court recommends that Plaintiff's case be
15 dismissed without prejudice.

16 The law permits a district court to dismiss an action based on a party's failure to comply
17 with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for
18 failure to comply with an order requiring amendment of complaint). In determining whether to
19 dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious
20 resolution of litigation, (2) the court's need to manage its docket, (3) the risk of prejudice to the
21 defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the
22 availability of less-drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d
23 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.
24 1987)).

25 The first two factors, the public's interest in expeditiously resolving this litigation and the
26 Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The third
27 factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of
28 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court

1 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
2 factor—the public policy favoring disposition of cases on their merits— weighs against dismissal.

3 The fifth factor requires the Court to consider whether less-drastic alternatives can be used
4 to correct the party’s failure that brought about the Court’s need to consider dismissal. Courts
5 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
6 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
7 Cir. 1986). Because this action cannot proceed without an operative complaint, the only
8 alternative is to enter another order setting another deadline. The circumstances here do not
9 indicate that Plaintiff needs additional time. Therefore, setting another deadline is not a
10 meaningful alternative. So, the fifth factor favors dismissal.

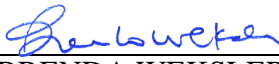
11 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
12 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four
13 factors support dismissal or where at least three factors “strongly” support dismissal).

14 **IT IS THEREFORE RECOMMENDED** that this action is **DISMISSED without**
15 **prejudice** for failure to comply with the Court’s amended complaint deadline.

16 **NOTICE**

17 This report and recommendation is submitted to the United States district judge assigned
18 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
19 may file a written objection supported by points and authorities within fourteen days of being
20 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
21 objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951 F.2d 1153,
22 1157 (9th Cir. 1991).

23
24 DATED: September 23, 2024

25 
26 BREND A WEKSLER
27 UNITED STATES MAGISTRATE JUDGE
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